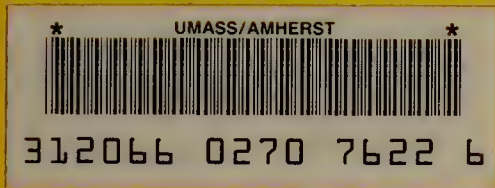


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# **The Council's Role In School Budgets**

*Prepared by the Massachusetts  
Executive Office of  
Communities and Development*

Michael S. Dukakis  
Governor

Amy S. Anthony  
Secretary

MASSACHUSETTS  
EXECUTIVE OFFICE OF  
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Michael S. Dukakis, Governor  
Amy S. Anthony, Secretary

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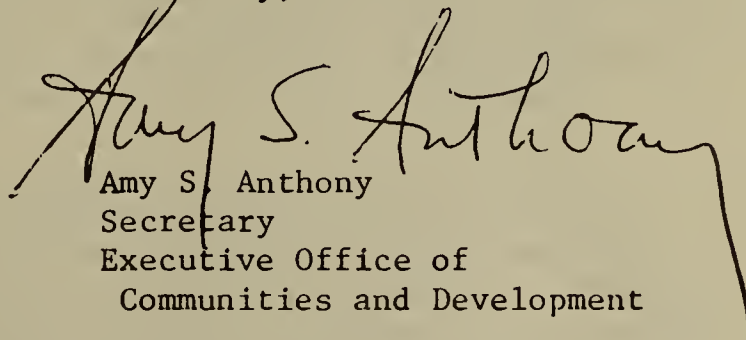
Dear Local Official:

This handbook is designed to help municipal officials engaged in the local budget process carry out their new responsibilities concerning schools. While originally prepared for City Councillors, a great deal of the material is equally applicable to Finance Committees, Mayors, Managers, and Selectmen.

The Commonwealth's local officials are faced with the difficult task of preparing budgets which account for the relative needs of police, fire, public works, and school services. I believe this guide will be helpful in thinking about schools. In particular, the list of questions on pages 3 and 4 have proven of use to local officials; they were prepared with the assistance of Commissioner Lawson of the State Department of Education. In addition, James Lucey's observations on the critical elements in school budget analysis are, I believe, essential to a comprehensive understanding of school finance.

The Executive Office of Communities and Development will be pleased to provide additional copies of this publication on request. Copies may be obtained by calling our Division of Municipal Development at (617) 727-3253 or toll free at 1-800-392-6445.

Sincerely,

  
Amy S. Anthony  
Secretary  
Executive Office of  
Communities and Development



## BACKGROUND

On April 17, 1982, the Executive Office of Communities and Development in cooperation with the Center for Public Service at Brandeis and the Massachusetts Municipal Association held a workshop for Massachusetts councillors. This was the third annual spring workshop sponsored by these groups for city councillors.

The first panel of the morning session was devoted to school-city relationships. The panel was moderated and organized by Richard Kobayashi of the Executive Office of Communities and Development. The panel members were John Curley III, City Solicitor for Leominster; James Lucey, Budget Coordinator for the Boston School Department; and Francis Duehay, City Councillor from Cambridge. Assistance in designing the program was provided by Samuel Tyler, Associate Director of the Boston Municipal Research Bureau.

In Mr. Lucey's remarks he provides an overview of the structure of the school budget with special emphasis on the difference between mandated and regular education programs. Mr. Curley reviews the sequence of events leading up to the Leominster case and describes the history of school committee fiscal autonomy in Massachusetts. Mr. Duehay discusses in his remarks the politics of council-school relations and the appropriate role of the council in the budget deliberations.

Mr. Lucey's remarks begin on page 6.

Mr. Curley's remarks begin on page 19.

Mr. Duehay's remarks begin on page 25.

At the time of the workshop, the Supreme Judicial Court of the Commonwealth had before it a case in which the City of Leominster asserted that the mayor of a city had the right to cut the school budget prior to submitting it to the city council. The Supreme Judicial Court ruled in the City's favor. A summary of the decision is included as an addendum to the panel discussion and may be found on page 34. In Mr. Curley's remarks the arguments for the City's side of the case is explained. In its decision the Supreme Judicial Court appears to have accepted these arguments.

In a related judicial development, the Supreme Judicial Court handed down a decision which stated that where the first year of a collective bargaining agreement between the teachers union and the School Committee of the City of Boston was funded by the City Council, the entire agreement was approved and a clause that provided for salary increases in the second and third year of the agreement was valid and enforceable. The Court stated that consequently it was incumbent upon the Mayor and Council to



Background (continued)

provide in the annual budget of the City for an appropriation of funds necessary to pay the salary increases in the succeeding years of the contract. The citation for this case is 386 Mass. 197.

In considering the application of these decisions in your community, the municipal legal officer should be consulted.

Additional copies of this document may be obtained from the Executive Office of Communities and Development, Division of Community Services, Room 904, 100 Cambridge Street, Boston, MA 02202, telephone 727-3253 or toll-free 1-800-392-6445. Questions pertaining to context should be directed to Richard M. Kobayashi, Deputy Administrator.

## LOOKING AT THE SCHOOL BUDGET - THE COUNCIL'S ROLE

Since the passage of Proposition 2½, which eliminated school committee fiscal autonomy, city councils have had a far greater role in municipal spending decisions than was previously the case.

Prior to the passage of Proposition 2½, city councils had a responsibility to pass the school budget as submitted. Since the passage of 2½, councils may cut the school budget in total, but may not target cuts to specific programs.

City councillors should be aware of 2 pieces of recently passed law. First, Chapter 782 of the Acts of 1981, Section 4 states "The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation."

In addition, the legislature passed Chapter 471 of the Acts of 1981 which states "In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriation requested and shall not allocate appropriations among accounts or place any restrictions on such appropriations. The city or town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations."

City councils have a complex issue to deal with on school budgets. The principal question they face is determining how much of the city's limited resources should be allocated to education.

Councils must determine under 2½ the relative value of education, public safety, health, and other public services. They are now responsible for the provision of all local services and perhaps more importantly the mix of those services. In examining the education budget, councils may consider the following questions:

- How many programs does the school provide. (Most provide over 50 programs.)  
What is the cost of each program.  
Which are mandated by law.  
Which are discretionary.
- Which programs have been added over the last five years; deleted over the last five years.
- How many electives are in the curriculum.
- What is the ratio of salaries of teachers per 1,000 children; what is the ratio of salaries of administrators per 1,000 children. How have these ratios changed over the last 5 years. How do they compare to other cities.

Also useful in understanding school finances are:

- The end-of-the-year annual financial report of schools to the state Department of Education.
- A summary from your school committee or administrator of the school budget process.
- A five-year projection of enrollment and a five-year history of enrollment.

#### Summary

As most councillors are aware, budget making is a highly political process and is likely to become more so with the continuation of revenue limitation measures. Under the present situation, a councils' power is significantly increased since it must allocate shares of the budget among the full range of municipal services. Councils no longer can simply "pass budgets" but are required to choose among different programs and services to determine the "mix" of services to be provided in a community.

Since education is a major part of a municipal expenditure, councils will be required to develop greater skill in analyzing the school budget than has previously been the case, and will have to develop ways of dealing with political pressures from school constituencies which were previously focused exclusively on the school committee.

Prepared by:

Richard M. Kobayashi, Executive Office of Communities and Development.  
A handout to participants at the third annual workshop for city councillors held at Brandeis University on April 17, 1982.



JIM: It is always a little strange for me to go in front of a group of Councillors and indicate that I am from Boston and deal with finances and Boston's school budget. A lot of things have been in crisis in the City of Boston. As Dick points out, if your schools have a problem, Boston already has had that problem and we can tell you how we've dealt with it. Sometimes we've dealt with our problems very, very well, but haven't gotten good press. Other times we've not dealt well at all and have gotten some pretty bad press. In any case, I think that there are a number of things Boston has in common with your community concerning school budgets; the structure of the budget; the relationship of the schools to the Mayor, to the Council, and to the public at large.

While I could go on at great length on these topics, more important for our purposes today is for you as City Councillors to be able to look at a school budget and to be able to make adequate and informed judgements based on the contents of that budget. The form of the school budget document is going to differ in every community. Cambridge has a program budget format set up very nicely and neatly and presents a model budget format at which we all ought to be taking a look. The Boston Schools use a responsibility center budget format. While I am sure that each and every one of your school departments is going to use a different format in the budget, I am sure also that the basic content of that budget is going to be the same no matter the budget format, the size of the system of it's budget, or the location of the school system.

What I would like to focus on today, then, is some of the school budget content from the point of view of an educator; some to the content you have to take a look at in order to know, understand, and evaluate your school budget. When I am done, I hope that you will see that the main concepts and the organizing principles for the content of your school budget will turn out to be about the same as those that go into the State Year-End Report\* with is one to the documents that you should be taking a look at as you review the school budget.

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\* All school departments file uniform year-end fiscal and programmatic reports with the Mass. Department of Education. They are public documents and are available from local school departments.

## INTRODUCTION

DICK KOBAYASHI: Let me introduce myself. I am Dick Kobayashi and I am with the Executive Office of Communities and Development and the first substantive item on our agenda is the issue of school/municipal cooperation.

The first speaker will be James Lucey. Jim is budget coordinator for the school system in Boston. Jim had considerable experience with educational and youth services management in the state of New York, and in his past life was principal of an alternative school in Albany which drew on federal, state, local, and some private sector funding as well. He is an expert at comingling funds. Some of you may have wondered why we have invited somebody from Boston to be on this panel. Jim is well qualified to talk about any aspect of school budgeting, since whatever particular school issue you have in your community that you might be concerned about, Boston has, so we are confident that with Jim with us we can cover any school budget issue. To his right is John Curley. John is the newly appointed city solicitor for the City of Leominster. The City of Leominster has a case pending in the courts in helping communities define what the legal responsibilities of mayors and city councillors are concerning the school budget. John prepared and argued the case that the City has before the Supreme Judicial Court. We had hoped that by this morning the court would have rendered a decision; it hasn't, but the final adjudication of Leominster's case on the power of the mayor and the city council will have applicability to all cities in the Commonwealth, not just Leominster. To my immediate left is Frank Duehay. Frank Duehay has a long and distinguished political career in the City of Cambridge where he has served as Mayor, City Councillor, a five term member of the School Committee, and for about eight years was Executive Director of the Lincoln/Filene Center for Citizenship at Tufts University. I am going to ask Jim Lucey to make the first presentation, and note that after each speaker is finished, we will have some time for questions before we go in to the next speaker.



In broad form, there are three kinds of programs or expenses which you will have to look for in your school budgets: those which are mandated; those which are unavoidable; and those which are desirable.

#### MANDATED PROGRAMS OR EXPENSES

When we talk about how you are earmarking money for particular programs in your community, particularly for education, we have to keep in mind that there are certain mandated programs that have to be carried out by school systems. Constitutionally, education is a state function and the state mandates that children shall be educated and how they shall be educated. There are compulsory attendance laws which require that children shall attend upon instruction. There are also certain kinds of instructional programs that are mandated, i.e., programs in regular education, special needs education, bilingual education, and vocational education. There are no state funds specifically earmarked for any of these programs.

What are the costs of regular education?

The regular education program ususally consists of kindergarten programs through grade twelve programs which are not targeted to children with specialized needs or language differences. Your community's kindergarten program and basic elementary school program is set up and classified as a regular education program. High school programs in English, Math, Science, and so forth are all contained within that program. In most municipalities some 80%-90% of the student population will be in the regular education population. Union contracts typically will indicate a maximum class size for regular education programs. As soon as the union contract limits the class size to a certain maximum and requires certain staffing patterns, the composition of your school budget begins to be determined and monies must be set aside for the purpose of regular education. In addition to maximum class size, the number of schools also affects your regular education budget. The more schools there are, the more spread out the student population becomes and the possibility of consolidating programs and classes decreases. This is especially true during times of declining enrollment.

It's often forgotten, but regular education is a mandate.

Mandated within state law are special needs programs for children with handicapping conditions. Chapter 766 requires that a child with an identified

handicapping condition must have an individualized education program. This law mandates that an individualized education plan and program must be developed and followed for each child with a handicapping condition. Also mandated are class size limits which depend upon the type of handicapping condition. If a child's program calls for a resource room program (i.e., if the child has moderate special needs and is classified as prototype .1, .2, .3), you will find that there is a maximum class size of 8 students at any one time if there is only a teacher and a maximum of 12 students if there is a teacher and a teacher aide. Similarly, in the substantially separate programs (i.e., programs for children with severe special needs) the class size also is a maximum of 8 students and 12 students with an aide.

In Boston, the maximum class size by union contract for regular education is 33. However, if a group of 33 children have special needs prototypes and individualized education plans, then for every 8 children there must be at least one teacher. In effect, these programs are four times more expensive to operate than are regular education programs. This is because for the same 33 children with special needs, four teachers are required rather than one teacher who would be required for that same number of regular education students. In practice, four teachers and one teacher aide would be required since there would be three classes of eight students and one class of nine students. The class of nine students would require the services of both a teacher and a teacher aide.

Class size is mandated by state regulations and cannot be changed. A school system can and will be taken to court by special needs parents or advocacy groups if there is a non-compliance with those regulations. An example of non-compliance would be when there is a ninth child in a class without a teacher aide. Not only is there a single case of non-compliance for that ninth youngster, but there also are eight more separate cases, one for each of the other eight youngsters. The courts, for example, have upheld that the Boston Public Schools must run a compensatory program for each individual case of non-compliance. Those programs have had to be run on Saturday and during the summer. So the costs begin to mount. If our system is in compliance, the costs are roughly four times more expensive than regular education, and if we don't comply with the regulation (or if there is a delay in getting a teacher



or a teacher aide in place), then we must implement the program and then pay the additional costs of operating compensatory programs. It is important, then, that you take a look at potential compliance issues and understand them when you evaluate the school budgets in your own municipality.

Keep in mind, also that there are different kinds of special needs programs. There are programs for children with certain disabilities where you can indeed have eight children in a class with only one teacher. But there are other cases where eight students would be totally unmanagable for even one teacher and one teacher aide. When there are children with multiple handicapping conditions; when there are adolescents who need diapers and the diapers must be changed hourly, for example; when the handicapping condition is very severe, it is likely that even one full-time teacher aide will be needed for every child in the class. Needless to say, these can be very, very expensive programs. However expensive these programs may be, they are mandated programs and persons with handicapping conditions are entitled to such programs as part of a free and appropriate public education and as a civil right. The courts have upheld, at least so far, that all persons are entitled to that free and appropriate public education. You must keep these factors in mind when you talk about staffing patterns, class sizes, and the various kinds of programs offered within your school systems.

There are some children with special needs requiring services that cannot be offered within a single municipality. Some children do require 24-hour institutional care. Those costs are carried by the local school department. Sometimes they are cost-shared with different social service agencies, but very often they are not. The most expensive placements can cost in excess of \$40,000 a year for the placement of a single child. Boston's total budget for tuitioned special needs programs--and these are the costs of tuitions only, not the costs of transportation--is in the neighborhood of \$14 million per year. Transportation costs another \$3 million. Those amounts cover some 1100 to 1200 youngsters on any given day. You certainly are not going to find the need for tuitioned programs in that concentration in your own communities, but tuitioning out can be a very real issue. You definitely need to ask whether you can operate the required program within your own municipality as cost-effectively as

through a tuitioned program.

Bilingual education is mandated, similarly, for children who exhibit limited English proficiency. The courts have upheld, in Massachusetts and elsewhere, that children are entitled to instruction in their own native language. If children are not fluent in English, it is an abridgement of their rights if they receive instruction in English only, this is because they can't possibly learn or conceptualize if they can't understand the language of instruction.

The maximum bilingual class size for children of the same age is 18 students with a teacher, 25 students with a teacher and an aide. If there are multiple ages, and there very often are, then the limits hold at 15 students with a teacher and 20 students with a teacher and an aide. Again, if you take a look in relationship with the maximum class allowed in Boston (33 students to one teacher for regular education), the bilingual program tends to be more expensive by almost 2 to 1 because fewer students are served by the teacher. Keep in mind also that in Boston, as well as in other cities, we teach bilingual programs in several major languages. A teacher who is proficient to teach bilingual classes in Spanish is not necessarily proficient to teach in Vietnamese, Cape Verdean, or any other language which might be required. Again, the problem is to make sure that we serve children and are able to use the transitional bilingual education programs to meet the goal of student competency, whether in the native language or in English. Right now in Boston we have 7000 bilingual pupils who require instruction in nine languages other than English. The bilingual program is mandated and the courts have upheld that it must be offered.

Vocational education also is mandated and is very expensive not only because it is more heavily labor intensive than regular education, but because it is more capital intensive as well. Also keep in mind there is a practical limitation that requires some real assessment as to the number of staff you need. You are limited in your student-teacher ratio by the number of stations that are available for vocational education. If there are 15 stations available, you need one teacher for those 15 stations. And if your maximum class size for regular education is 33 and if there are only 15 vocational stations, then 15 students are all that can be handled with a single teacher. Please note that this is also true in certain regular education programs, notably science, home economics, and



business education. When there are "x" number of stations--when there are only "x" number of typewriters in a business classroom--then you are limited in a very real way in altering the ratio of students to teachers. Those limits are very real in your school budgets and must be contended with as you review and evaluate them.

The courts will require that mandated programs be funded. If the dollars are not there from one source, they will have to come from another. The courts will order it.

#### UNAVOIDABLE EXPENSES

We've talked about mandated costs. Now let's talk about some of the unavoidable costs, i.e., costs which you can't eliminate or avoid, but which you can control.

Most of the school budget will be associated with the costs of personnel needed to operate the instructional program. Regular teachers and vocational instructors are likely to be the most costly since they work in long standing programs and will tend, for that reason, to be at the upper end of the salary scale. Bilingual and special needs teacher salaries will be slightly lower since their programs tend to be relatively new. Guidance counselors, nurses, core evaluators, and other support staff are needed to provide necessary support services to students. Paraprofessionals or instructional aides often are used to provide more individualized attention to students. Building administrators and clerical support staff also coordinate building level activities, whereas district-wide staff coordinate district-wide functions between and among schools. Custodians, security staff, food service workers, and bus drivers all provide necessary services, though these functions are not directly instructional in nature.

Usually each group of employees has a bargaining unit of its own. It is important that all contracts be thought out very carefully in terms of the municipality's willingness and ability to pay in conjunction with the necessity of the service. Items such as class size limits, minimum staffing requirements, and working conditions play major parts in determining a school budget, but aren't always seen as cost items. The salary schedule certainly is a cost item with the union contract. So are unavoidable fixed charges, severance pay agreements, and other employee benefits. The Boston School Department has earmarked some \$7 million

for the costs of health insurance and some \$4 million for pensions for persons with service in the City prior to 1936. This doesn't even count for the costs of workers' compensation, regular pensions for retirees, or the costs of disability pensions not covered directly by the school budget.

We've got 123 school buildings in the City of Boston. We closed 27 schools last year; believe me, not an easy thing to do. Heat and utility costs are carried in the school's operating budget. We have been able to limit out energy costs to some \$13 million per year for those 123 buildings. It turns out that our newer buildings, the total electric building built within the last ten years, tend to use the most energy. The 19 newest buildings that were built in the City of Boston were using 50% of our energy. We've been able to reduce our energy costs this past year by several million dollars after accounting for the fact that 27 buildings were closed. Energy conservation programs are absolutely necessary, but at some point the easy low cost measures will be exhausted and won't yield additional savings. They still will help to control costs, but no longer will generate the very large savings. At some point you will be forced into some capital measures. If a building doesn't have storm windows, for example, the only way you are going to maintain heat in that building is to get some storm windows on that building. You can judge what it will cost to do that for more than 120 schools. Maintenance and operating costs can be controlled, but not avoided. Your buildings must be maintained and cleaned. Preventive maintenance programs must be carried out within the context of long range building use plans.

Transportation costs are unavoidable no matter if you run your own fleet or rely upon the "T" or other public transportation. If you run your own fleet (Boston operates 550 vehicles) you've got the unavoidable costs of wages, fuel, maintenance, and insurance. The cost for fuel and oil depends on the miles traveled, on the efficiency of the vehicles, and on the unit price of fuel. While gasoline prices have been fairly stable for the past year, any increase in gasoline prices will increase costs for the schools. As vehicles become older, maintenance costs increase and, eventually, the vehicle will have to be replaced if safety factors and standards are to be followed. Even closing school buildings



very often yields the need for increased transportation mileage and, hence, increased transportation costs. These same factors impact on public transportation as well as increased costs must be covered eventually in fare increases.

Safety and security are also unavoidable expenses. Children must be in school. Attendance is compulsory. Maintaining safe and secure environments in school buildings and on school vehicles is essential. One of the cost cutting suggestions a year ago from John Silber was to turn the heat way down. He apparently had found this to be effective at Boston University. However, this is not a particularly good solution for kindergarteners and other young children who tend to go through whole cycles of childhood diseases. Even if you wanted to, you simply cannot turn the heat way down in buildings housing young children if your schools are to be safe and secure.

Can you manage the heat better?

Yes, you can and you should.

Can you avoid these costs?

No, you cannot.

#### DESIRABLE PROGRAMS OR EXPENSES

The desirable programs always seem to come last. This is not to say that mandated programs aren't desirable. In all likelihood the reason most programs were mandated in the first place was that they were considered desirable, so desirable that a child's right to the program was protected by mandating that the program be offered.

The chief reason that desirable programs always seem to come last is that once the mandated programs and unavoidable expenses are budgeted and taken care of, there usually is little money remaining for desirable expenses. For example, it makes sense that a teacher can do a better job teaching reading to a class of 12 regular education students rather than to a class of 33 regular education students. Smaller class sizes certainly are desirable in such cases and may well turn out to be cost effective in the long run, but in a single fiscal year's budget are they affordable in light of the other costs pressing on the budget? How does what is desirable for regular education programs stand up against what is desirable and mandated for the special needs program or for any other

mandated program for that matter. How does what is desirable for an alternative education program stand up against the unavoidable costs of energy or even of employee benefit plans?

Yes, creative programming and effective and efficient use of resources can reduce some of these tensions and free up some monies for desirable programs. Those tensions never will be eliminated completely, however.

Programs have been mandated by the state and regulations have been promulgated to establish standards for those programs. Yet the state does not earmark state aid monies to cover the full costs of mandated programs. These monies must come from local tax funds and the courts will order that the monies be found. The impact, then, is not only on what is desirable within the school budget, but also is on the municipal budget as a whole. As councillors you are faced not only with the tensions inherent in the issues of what is desirable and what is affordable within the school budget, but also with the tensions inherent in what is desirable and affordable with the municipal budget as a whole.

I'm sure that each of you can identify one or more vocal constituency group in your community which can tell you with great certainty and without doubt what is and what is not desirable and what should and what should not be funded in the municipal budget. Your local school committee can also point to sets of vocal critics and to sets of just as vocal advocates. But the budget debate as to what is desirable and what is affordable ought not go to the most vocal group, irrespective of consequences or social costs. To cut back on physical education programs, for example, may well yield budgetary savings but may yield physical damage to buildings or school buses as well. To curtail elective programs or after school athletic competition may well yield savings, but may also result in public safety problems calling for increased police or fire services. To reduce school guidance or attendance services may well only transfer savings to the costs to increased social services or mental health services.

Yet, to avoid making some difficult decisions can yield some delayed social consequences and costs even more severe than those which might have come up had the decision been made promptly and quickly. A good example of this is the closing of underutilized school buildings. Closing an underutilized school building can yield greater system-wide economies



of scale and generate considerable savings on heat, utilities, materials, and on salaries and benefits as well. Yet tensions arise since citizens oftentimes have chosen to live in certain areas on the basis of certain schools and to close those school buildings would be to wrench the social fabric of the whole community. The tensions generated between the potential savings (and the desirable programs which might be continued with those savings) and the social costs of closing a school building and modifying attendance areas can often paralyze decision makers. In such a case, there is no decision and, hence, no savings are generated but the potential of future school closings still looms over the citizens' heads. This happened in Boston during a long period of declining enrollment with the inescapable result that 27 school buildings had to be closed in a single fiscal year. Had the decision to close some buildings been made and implemented years earlier a goodly portion of the trauma and disruption could have been avoided and the savings generated earlier might well have precluded the need to such drastic measures.

#### SUMMARY

Let me leave you now with the following summary points for your consideration:

First, in order to evaluate your school budget you must know your school system in terms of what programs and expenses are mandated, unavoidable, and desirable. Your school officials can help you with this. The year end report can provide some summary data allowing comparisons over time and between districts.

Second, in order to evaluate your school budget you must know how and under what conditions those programs or expenses are mandated, unavoidable, or desirable. By this I mean that you need to know the details of the interdependencies between state regulations, your collective bargaining agreements, and the structure of your school organization. You also need to know about the school system's physical plant both in terms of the human ecology of the buildings and in terms of location in the community, physical condition, and energy usage. I hope my talk today has hinted at some of these details.

Third, in order to evaluate your school budget you must establish your budgetary information needs and begin discussions with school officials as

early as possible in order that you can digest the information obtained and in order that there is sufficient time for school officials to implement decisions implicit in the council's bottom line budget decision. Without sufficient lead time some actions may turn out to be impossible to implement or ineffective if implemented at all.

Finally, in order to evaluate your school budget you need to know your school system not only in terms of current operations, but also in terms of future plans and obligations. Unless you understand the school system in a mid-range to long-range context, you cannot evaluate a collective bargaining agreement or the future costs carried in it. Nor can you evaluate the unavoidable future obligations inherent in a particular action (or inaction) unless you have that planning perspective.

#### QUESTIONS AND ANSWERS

QUESTION: You haven't mentioned adult education programs. Are they mandated?

JIM: While a school system generally is responsible for providing educational services to non-graduate residents through age 21, certain adult programs are required. Examples would be programs in citizenship directed at naturalization and adult basic education courses leading to basic skills and/or an equivalency diploma. Other programs such as apprenticeship programs need not be offered by the school systems, but provisions must be made for residents to gain access to those programs. Finally, enrichment programs or practical arts programs in such areas as ceramics, investment counseling, modern dance, and so forth are not required, but very often are offered as adult education programs.

Tuitions can be charged to cover the costs of such programs and the decision to charge or not charge tuition becomes a tough one. The answer very often depends on the ability of residents to pay tuitions and on the community's vision of what the school system's obligations to the community at large is constructed to be.

QUESTION: Do you think that it would be desirable for the state to finance education and, second, do you know of a way of satisfying everyone with the distribution of resources in a budget.

JIM: To the last question, no, I don't think there is ever any way to satisfy everybody with the distribution of resources in a budget. I certainly haven't been able to do it, nor do I know anyone who has either. Let me say,



though, that some fairly good advance planning and exchange of information goes a long way toward satisfying a lot of people.

As to state finance of education, I believe that significant steps in that direction are inevitable. Education is reserved constitutionally as a state function. The state passes laws and promulgates regulations concerning the conduct of education. Courts in many states have been holding that strict reliance on local property taxes for educational finance must cease. While there has been no single plan or schema to replace the property tax, I think that it is merely a matter of time before some court forces the issue. But I don't think that any state will find the political will to develop the finance plan without the intervention of a court.

I don't see any other way out of the school finance dilemma over the long term in Massachusetts, especially with Proposition 2½ and the tough sets of decisions we're all making concerning what our cities and towns should look like and what municipal services can and should be offered. I think that education will be held to be a property right and that the state will be forced to earmark monies to ensure the equitable finance of education. School systems may begin to look very different as a result. In any case, I must point out that this is not the prevalent view amongst educators.

QUESTION: Does the city have to hire bilingual teachers for each tongue spoken by children in that city, and, if that bilingual program is not provided, can the parent end up with a judgement against the city?

JIM: There is an affirmative obligation to avoid discrimination because of language differences if there are at least 20 youth who speak that language and are of limited English proficiency. A bilingual program must be offered in a language if there are at least 20 students who qualify in that language and if that program were not to be offered, parents would have recourse through the courts. I believe that the program would be ordered in such a case. However, I am not aware of any constitutional obligation to offer bilingual programs, English as a Second Language (ESL) programs, or tutorial programs for fewer than 20 students who qualify in a language.

As a practical matter, however, Boston has entered willingly into a consent decree where certain programs are offered to small language groups so the issue of remedy has not come up in bilingual education.

The issue of remedy has come up in special needs. As I indicated earlier, non-compliance has led to court ordered compensatory programs during the summer and over weekends during the school year. Some court appointed experts recently have argued for actual monetary damages where programs have been denied or were inadequate. Nationwide, some courts have been asked for monetary damages when due process rights to an education were claimed to have been denied. I'm not aware of the results of such cases, but the thrust of advocacy groups seems to be in that direction.

KOBAYASHI: I think its now appropriate to move to Solicitor Curley.

CURLEY: Thank you. As Richard mentioned, the City of Leominster has a case pending, and when it is finally decided, it will have statewide ramifications. When I said I would speak here, I was hoping the case would be decided so I would have actual answers to give you. The case has not been decided yet, and I just hope I don't leave you with more questions than you had when you came. In order to properly understand the relationship that I believe exists after Proposition 2½ between the City Councils and the School Committees of the various cities, you really have to understand what the law was in the past. For veteran councillors from cities who are fortunate enough to avoid a suit involving school appropriations, I just want to briefly explain what the situation was before the passage of 2½, to put the City of Leominster case in context.

Basically, what the law said before Proposition 2½ was that every city and town shall annually provide an amount of money sufficient for the support of public schools as required by Chapter 71 of the General Laws. The requirement was part of a centuries-old tradition. The courts in various decisions interpreting this chapter had noted that, as far back as 1647, the laws of the Crown Colony imposed a penalty on any town that did not appropriate money for public education. The public education statute itself, which is Chapter 71, Section 34 essentially dates back to 1827. So that when you're talking about a change in this section, made by Proposition 2½, you're really talking about a change of a way of doing things and an interpretation that had been going on for centuries. The essence of the conflict now is whether the change is as complete as the new law seems to say it is or whether, in fact, a centuries-old tradition still provides school committees some vestiges of their fiscal autonomy.

The fiscal autonomy of school committees is nowhere to be found in the old statute. It is a doctrine that has been developed because even under the old law, the school committee itself had no power to do anything if money wasn't appropriated. There were three remedies under the old section 34. The mayor of a city could commence a suit and that would occur if a city council cut a budget below what the mayor thought was "sufficient" to



provide the support of public schools. The Attorney General has the statutory authority to commence a suit if the state thought that the city council and the mayor had not appropriated enough money to support the public schools. This, in effect, would leave it up to a Superior Court judge to determine whether or not sufficient funds had been appropriated.

Now you may wonder why there have been so few of these suits in the past. Certainly a judge would recognize the needs of the taxpayers not to pay exorbitant property taxes, and it just didn't work that way. What happened in the traditional case is that 10 taxpayers would bring the suit saying that there was not sufficient monies appropriated to run the schools. At the trial of the case the school committee and the administrators would get into the court and testify as to their opinion, as educators, on how much money was necessary. The court would say, basically, our hands are tied. These are the people who deal with the schools on a day-to-day basis and these are the people with the expertise. We are not going to sit as a super school committee and second guess what they say is necessary for the support of the schools. Again, in all the cases that were brought up on appeal, when it came to the question of what was sufficient, the school committees determination prevailed.

In the old law there was a penalty, because the statute provides that if additional monies were ordered appropriated after the case went to court, a penalty would be imposed on the city of a further 25% on that along with the additional monies that were necessary. This was in the law primarily to prevent the cities, the mayors, and councils from denying increases every year and making the school committee or making 10 taxpayers take the city to court year after year. With the 25% penalty, it became cost prohibitive to cut the school budget unless the city thought it had a really good case. This factor coupled with the difference the court gave to schools gave rise to the doctrine of fiscal autonomy of school committees.

I would like to point out that the mayor and the city council did have the power to cut the school department's budget. And if this power were exercised, as it was on occasion in Leominster, and 10 taxpayers did not go to court, then the budget as cut would prevail. As a practical matter, you would not get a cut budget prevailing unless the school department really



said, "Yes, if you cut us, we can live with that; we won't make you raise the tax rate. We will cut back a little bit." It was their tacit approval that would allow a city to get away with this. But it could, in fact, be done.

Then in 1980 came Proposition 2½, and it reduced the wording of Section 34 by about 75%. It cut out the 25% penalty for failure to approve the school budget as submitted by the school committee, and eliminated the most important change in that the power of the mayor, the taxpayers or attorney general to sue to determine what are sufficient funds for schools has been eliminated. In other words, what Proposition 2½ did was take away the judicial club that the school committees had in fiscal autonomy. Chapter 71, Section 34 now reads that every city or town shall annually provide an amount of money sufficient for the support of public schools as required by this chapter, provided however that no city or town shall be required to provide more money for the support of the public schools than what is appropriated by the legislative body of the city or town. The plain reading of the language is that when the city council finally passes that school department budget, that is what the school department must live with. In your handouts I noticed that you had the two amendments to Section 34 since the original version was passed. In October, 1981 Section 34 was amended to show that the appropriating body shall only appropriate the total amount and cannot place any line item restrictions on the school department budget. I also provided that the city council could make nonbinding recommendations to increase or decrease certain line items. As if that weren't clear enough, in January, 1982 when the last amendment to Proposition 2½ was voted, it further amended Section 34 to specify that the vote of the legislative body of a city or town shall establish the total appropriation for the support of the schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation. To me, both of those amendments say essentially the same thing. City councils control the bottom line but do not control any of the line items. Those statutes were put in there, quite frankly, at the time the Leominster case was decided in the Superior Court, which was July of 1981, before these two amendments went in. The mayor had, in fact, tried to delete specific line items and tried to add to specific line items. At the time that we argued this case in the Supreme Judicial

Court in February, both Bob Chemney, who was representing the school committee and myself agreed that those statutes had cleared up the question forever and we didn't even argue. In the City of Leominster case, itself, the question arose specifically in the context of what is the budgetary process of a Plan B city government. Basically what happened is the Superintendent of Schools and the School Committee came up with a reduced budget under 2½ of a little over \$10 million dollars. The Mayor in Leominster is a member and is the Chairman of the School Committee by charter, and the budget was passed 6 to 1, and I'll leave it to your imagination as to the who the 1 was objecting to the budget. What happened thereafter is that the Mayor said essentially that the School Committee for all its past fiscal autonomy is essentially now like any other city department and like any other city department, the Mayor recommends to the City Council what the budget is. The authority is specifically in Chapter 44, Section 32. And the key words in that statute are the amounts recommended by him of the proposed expenditures. The him being the Mayor.

The questions raised in the City of Leominster suit are as follows: the School Committee took the position that it is the City Council alone which can cut the bottom line and because of the history of fiscal autonomy that School Committee enjoyed in the past and the fact that if the new Chapter 34 means what it says it means, it's a very radical departure. They are saying that the Mayor in the case of the School Committee budget must act as a conduit and must take the budget requested by the School Committee and pass it intact to the City Council. And there is the implied acknowledgement that once the City Council passes the entire budget, that is it. If the City Council cuts the school department budget, then the school department has to live with that. They are saying that the Mayor does not have that power. The Mayor, on the other hand, took the position that I just explained. The school department is like any other city department and he had the overall budgetary authority of what he can submit to the city council, and the council can then cut but cannot add. The case, as I said, was argued on precisely that point. It was argued on February 1 of this year and we are awaiting a decision.

I do want to point out that the superior court judge in the Leominster case, Judge Rutledge, sitting in Worcester Superior Court ruled in favor of



the city. It basically said to the School Committee, you cannot show me a statute saying that the school department is not like any other city department, so I'm going to say the Mayor has the power to submit his own budget under Chapter 44, Section 32.

In a superior court case in April involving the City of Medford, I believe, Judge Abrams ruled the opposite way. He essentially said that he adopted the reasoning and the logic behind the school department's argument in the City of Leominster's case saying that because of the vast tradition of school department autonomy, a change in the law this radical has to be specifically stated and if it isn't specifically stated, then were going to say that the mayor must act as a conduit.

QUESTION: Excuse me. The problem as acting as a conduit, as we found in Newton, is that which our mayor is taking this year. Because the problem is you have to send in the budget the School Committee submits. And then the mayor is under another constraint, as he is obligated to send to the board of aldermen a balanced budget. In other words, if the school department asks for some huge sum of money, and he acts as a conduit, he would have to submit budgets to us of all the other city department that were cut 50%, to take an exaggerated point.

ANSWER - Curley: That was one of our concerns.

QUESTION: It puts you in a very weird position.

ANSWER - Curley: One of our concerns is if the Mayor must act as a conduit, with  $2\frac{1}{2}$  as you all realize, there is now an overall limit on the amount of money that any city can raise. Before it was a question of whether you could go up on the tax rate or not, which might be politically unpopular, but legal. Now it is illegal to spend any more than X number of dollars. If the mayor must act as a conduit, what you are going to find is that the school departments to finalize their budget. They must have independent hearings, and it's by far the largest city budget, before going to the council. And the Mayor and the rest of the city departments then have to wait to see if the entire budget is going to be passed, or whether the city council is going to cut some. Once the school department's final budget is decided, then the mayor can allocate what is left to his other departments: fire, police, DPW, human services, whatever. But what ever the amount is left to be divided among the other city departments, would depend on how much the council allowed



the school committee. Under the theory that the City of Leominster is going on, the Mayor has to balance all the budgets and allocate the resources of the city, which are now very limited, and he must have that authority in order to have any kind of effective budgetary process.

QUESTION: In Quincy, what the Mayor was talking about doing, if the school department came in with an amount of money higher than what he felt they should, was to submit it, and then recommend that we appropriate that amount, but appropriate a lesser amount. Then he in effect has fulfilled his responsibility as a conduit and the council then has the final say on what will be and, we either take his recommendation or not. And of course if we don't, we have to reduce the municipal budget even further. If I can ask a question also, wasn't there a revenue ruling that the mayors hung their hat on. Commissioner Hampers had said that in reality, its not the conduit method, but the mayor having the bottom line authority.

CURLEY: Yes, the Department of Revenue did issue a bulleting saying essentially that the Mayor has always had the power to cut the budgets, and with the 10 taxpayer suit eliminated, and specifically there are a couple of decisions that say fiscal autonomy of school departments has been eliminated. There is no real change in the law, its only a change in enforcement. That was submitted also to the Supreme Judicial Court as part of the brief. Whether that is what the justices will hand their hat on, I don't know.

QUESTION: You said earlier that in the Leominster case, the judge said that the school committee could show no place in the law that set them apart from any other city department. Is that what you said?

CURLEY: I tend to disagree. Because, as you say, the school department is separate and you have to look at what was not changed by 2½. The school department is the only body authorized to select teachers and to enter into contracts with teachers. It is the only body empowered by statutes to receive grants for education which are separate and apart from any budgetary process. It has by statute the right to hire separate legal counsel for collective bargaining up to \$10,000, and for its own general legal purposes, up to \$5,000. The school committee is the only body under the collective bargaining statute, Chapter 150E, to determine what amount of money is necessary to fund collective bargaining agreements. As far as collective bargaining goes, on that issue the Mayor by statue must act as conduit. He cannot negate what the school committee has collectively bargained with its teachers by refusing to pass that amount along to the council.

KOBAYASHI: Let's continue and have Frank Duehay give his presentation which I have a sense will tie up all these pieces together.

DUEHAY: Well, I'm not sure whether it does or not. I find the discussions very interesting. When Dick asked me to come here, I said "Are you crazy having a conference the first day of a three day weekend?" and I said but if anybody else is going to come and give their time I would like to do that also. I think that whatever you believe about whether the mayor should be powerful or weak, it seems to me that 2½ increases the power of the city council. The city council has a lot more responsibility with regard to public education than it's had for centuries. Having been both on the school committee and on the city council for 6 terms, I am not sure that city councils are up to it. I'm not sure that they really want what they are getting into. They've screamed and yelled about school committee autonomy for a long time and now they have what they've been asking for, responsibility for the school budget. I assume that all of us are here today because we want to exercise that new responsibility in a thoughtful and appropriate way.

I come from a type of city council which elects a mayor. We have a city manager, the mayor becomes chairman of the council, and chairman of the school committee. We are used to doing things collectively. I tend not to want to have the mayor or the manager have budgetary power all alone. I want the city council to have it. That happens to be partly, I think, because we share the power among our city council in Cambridge and we tell the city manager what to do in a policy sense. I don't like the mayor or manager having a lot of unilateral power, I'm not sure it's wise.

One fact of life in the post 2½ era is that city councils have very much increased power and it's clear that with Proposition 2½ there is going to be a tendency toward cannibalism. For a long time, a lot of selectmen and city councils have been waiting to get their hands on the school budget because it is the largest financial piece of most communities and we are held responsible for the tax rate to a greater degree than the school committee is, although theoretically we've all argued that the school committee should be held responsible. It is much more typically the case that the mayor or the selectmen or the city council are held responsible for the tax rate and



they have been greatly annoyed to find that there is a huge section of the budget over which they have no control. Conversely, it's been convenient to say "Well you know I've been elected but the school committee really has gone out and overspent". Now we are not going to have anybody to blame anymore because it's our decision and we can't avoid it and we've got to get into school finances and policy.

I think the first decision that we all have to make is to determine what model of interaction with the school committee you are going to have, this is important, because you want to go through the whole budgeting process with a reasonable degree of decorum, if possible; and you want to avoid school committee people running for your jobs next year on certain kinds of issues. You basically want to have a situation in which the ground rules at least are understood and agreed on. It may not be possible politically in your community to do this and lay out the ground rules between the mayor, the school committee and the city council. But it is worth a try.

One model is to have a kind of agreement that recognizes that you have an elected school committee. I think I might argue given the school budget provisions of 2½, it would be better to have done away with school committees entirely, and have the superintendent of schools operate as a city department, if the school committee doesn't have any control over money then it doesn't really have anything in my judgement. All this other stuff is nonsense. If you don't have the power over the money, you really can't do anything. We may find over the long run that school committees are going to become obsolete or that they should become obsolete. But presently they are there, they do have certain legal powers and they do have power over the distribution of money within the budget and even though city councils and mayors can make non-binding suggestions, they do have line item control.

The real question is how are you going to treat the school committee and how do you make your rules explicit beforehand. It seems to me the range is that either you take that school committee and you say "We are going to listen to you very carefully and we want your recommendations and as long as we can have some kind of general agreements about the level of funding and what's going to happen in collective bargaining. By and large we are going to give you a great deal of the initiative and latitude within specified funding limits, because after all you were elected and you are spending a lot more time



at the school functions and we want you to do this but we want to have an opportunity to review and monitor your budget." The other extreme, is to take almost full responsibility in terms of having detailed budget presentations made by the superintendent and the business manager and whatever members of the school committee are interested and go over every one of these line items just as if you were the school committee. In a sense, do it in such a way, that you take school budget responsibility fully and completely. Between these two extremes there are all kinds of various possibilities. It seems to me you have to think this out and you have got to act as a group on the city council in the exercise of power that you now have. You have to think carefully about how you are going to exercise your new powers.

In order to set policy, whether you decide to go over the line items of the budget or whether you decide to go to the school committee for recommendations, you have got to know the details. This means you have to visit the schools; you have to understand each of the programs; you have to go to community meetings where parents are involved; and you have to get involved in understanding these items of the school budget. Whether you choose then to act as a budget committee and make very specific decisions, is another matter but you cannot even make policy decisions or decide on the aggregate amount of money necessary for the operation of the schools if you don't know a thing about them. You have to understand the requirements for art, music, reading, guidance counsellors and principals, and various ways of improving productivity; you cannot stay out of collective bargaining. I would suggest that you have to get involved in collective bargaining, you have to understand, and make sure your top school administrators work just the same way that they do in the city and that we don't go all outdoors with benefits and salaries. You have to be very much involved with it because personnel is 85% of the budget. Salaries are the big item with regard to personnel and it is the salary increases and the benefit increases that more than any other single factor have affected municipal budgets over the last several years.

Let me just give you another example from our community. Many school teachers and school management and administrative personnel get very good salaries but don't work very long. A lot of school principals work for 9 or 10 months a year and get all the vacations that teachers and pupils do. If

you look very carefully you will often see people getting 25-30-35,000 dollars getting 3-4-5 months vacation. We have not been effective in Cambridge in changing these practices, but they should be changed.

My own feeling is that one area in which you have to look at is bilingual education. I have a feeling that there are a lot of bilingual teachers who hope to string this thing out. The objective of bilingual education should be to teach the children English and to get them into the mainstream. The purpose of the program should not be to perpetuate their culture and their language; that may be a perfectly desirable thing to do. But it should be done by their own cultural association, their own church or whatever. We should not in the public domain be giving private lessons. We do have a solemn responsibility in public education to make sure that a child who comes in from Vietnam knowing only Vietnamese is taught English and gets instructions in Vietnamese during that transition period while that child is learning English but then get that child into the mainstream. If that is our objective, we out to be teaching around the clock. We shouldn't be teaching from 8:00 in the morning to 1:00 in the afternoon, we ought to be teaching morning, noon, and night, vacations and summers because the sooner these kids learn English the sooner they move into the mainstream.

There are factors limiting productivity in some programs that are unfortunately written into the collective bargaining agreements. We have a very good school system in Cambridge but sometimes we unnecessarily bring consultants to meet with teachers on certain programs. In many cases there is no reason to bring the consultants in because the school principals or department heads should have the capacity. That is what we pay those people for. We pay top management good salaries to have the professional competence knowledge to be able to provide leadership.

The school department is a different kind of organization than a police department. When people come to their senses 6 months from now, we can do something about Proposition 2½; we can hire the 50 policemen back. Public safety will have been hurt, the people's families will have been hurt. But basically I think we can reconstruct public safety by simply hiring back laid off people. I think it is much harder to reconstruct public education when it is injured and hurt. We have had a lot of very idealistic people going into school teaching, some of them have gotten a little carried away with



extracurricular union activity and maybe we have a little corrective going on now which will be beneficial. You have a lot of people going in because they want to work idealistically with school children. The most important thing that you've got going in a school system is the climate of the school. The climate in which public education is taking place. Salaries and benefits are not the major determination of that school climate. They are important. It's important not to starve school teachers as it's important not to starve anybody in the public sector, and it's important to make sure that good people are rewarded and encouraged. But the climate is what is going to determine whether children are challenged, whether they go to school in a positive atmosphere, which is conducive to learning. If you go yelling and screaming at the school superintendent, the school superintendent goes yelling and screaming at the principals, and the principals scream and yell at the teachers and so on and so forth. You are going to reap the harvest that you yourself have sowed.

I think one of the terrible things going on today in the Commonwealth of Massachusetts is that we've got 5 more superintendent seats open, we've got the American Association of School Principals from Washington saying that Massachusetts is a disaster area for public education. For the first time, thank God, we've got a Commissioner of Education who is saying something about Proposition 2½ and the destruction that it is reaping especially in the cities. We have a very serious problem, at a time of declining resources, of maintaining the kind of climate that is necessary to keep your best teachers. We have already lost the people who have options. Young people especially, the people who have options are saying there is no future in being in public education in Massachusetts; we are going to get out and we are going to get out fast.

Some of our problems are also at the state level. You really have to laugh at people. We have all the budget deadlines to meet but the legislature is just beginning to decide what it wants to do with regard to local aid and we don't have the cherry sheet, and how in the world can we meet our deadlines.

If you are talking to parents who are going to make the decision about sending their kids to private school, they are looking around now and they are wondering what the effects of the second year Proposition 2½ are going



to be. They want to know: are they going to take art and music away? Are they going to take physical education away? The athletics? School athletics is a terrific thing. If you do away with Jr. Varsity sports, well, they will send their kids to St. Sebastian's. These parents are making their decisions now in April. They are not making their decisions in July, or August and so forth for next fall because it is competitive to get into these schools. We have got to stir up the people who are used to relaxing and making their decisions in the middle of the summer. We have to say "Hey look it isn't just a question of a policeman or a fireman being in the station, we are presenting to the parents of the children who are going into their first year of high school, what their courses of study are going to be. They are going to make decisions on what we present."

I would suggest that we have a not only new authority, but also new responsibility for public education. We can't ignore it. We need relief from Proposition 2½. We need to demand improved productivity and we need to monitor school collective bargaining. We can tighten up on the administration of school systems in ways perhaps school committees were a little reluctant to do because they would be lobbied by school parents. At the same time we tighten we have to take responsibility for the creation and maintenance of the public education system.

We are being hurt badly in Cambridge not only by 2½ but also by the withdrawal of federal funds. I happen to believe very strongly in public education; I think it is an outrage for the President to go on television and want to fund people who send their kids to private schools and parochial schools, not that I'm against private schools, but they should not be, in my judgement, burden all the other taxpayers in the country by giving tax breaks to people who send their kids to them. At the same time, the President is taking federal funds away from public education, he is building up independent and parochial education. You may not agree with how I feel about this but you can't ignore your responsibility. This is a responsibility that we all have now because we are the custodians of public education. You may give it away as the people who sponsored Proposition 2½ wanted to do or as certain elements in the federal government intend to. We can either give it away, we could destroy it, or we could stand up for it and I just hope that we will be able to do the latter.

I think the formulas for local aid are terrible, and need to be reworked. The details of the formulas are particularly important especially for the cities. I think this means that city officials have got to be spending a lot more time meeting with each other especially since the suburbs have a habit of taking money away from the cities. We are going to have to work much more closely with the legislature and the Massachusetts Municipal Association than any of us have in the past.

Another part of our school budget is the failure to change the energy systems. We have not retrofitted our buildings, and part of the reason we can't do it is we don't have the money to do it so we are in this very uncomfortable situation of watching the heat go out the windows and not being able to appropriate enough money to do anything about it. I think that we have to use our communications mechanisms better and we have to communicate through press releases to the local papers what we are doing, as we have a different role in the school budget. Once the relationship between the council and school committee has been agreed on, we have to make sure that everybody in town knows what it is, we need to issue press releases saying what the city council is going to do, what the mayor is going to do, and what the school committee is going to do so everybody knows.

We have this great responsibility. It is a wonderful responsibility. They give us the responsibility for the school and take all the money away. At any rate we have those responsibilities now and I think there is only one way you can go and that is to charge.

KOBAYASHI: Thank you very much. Finally, just before we go to lunch let's just ask a few questions.

MILLER: (Roberta Miller from Watertown) You were talking about being able to present parents with what school systems really will look like, and yet on the other hand all factors that you mentioned say you can't do it. In my own neighborhood, a number of people are going through exactly what you described. I want to know what your tactic is for pulling this off and being able to show people what the school system is going to look like when we don't know how much money we are going to have.

DUEHAY: Well I obviously said that to be deliberately provocative but I think that the biggest disgrace in the Commonwealth is 2½. I'm not upset about the school committee autonomy issue economy. I'm not upset to lose binding arbitration with police and fire, in fact I'm kind of pleased with



that. The thing I disagree with is that 2½ is taking away, for the first time in 200 years, the right of locally elected selectmen and city councils and mayors to make the decisions on many school teachers and how many firemen and how many librarians we will have. We have always been able to make those decisions as elected officials, now somebody says they'll put a cap on our budget and say you can go this far and no further. The right of local officials and local citizens to determine service levels and how heavily to tax themselves has been abrogated. We have got to get back home rule and we have got to impress on the legislature that they've got to make timely decisions about the local aid budget. What I'm saying is that as selectmen or a city councillor, we are closer to the people than state officials and we have to put the fire to the legislature and make them produce, to restore home rule, to give us a decent share of local aid, so we don't have to keep increasing property taxes. Otherwise, you are presiding over the destruction of public education. That is what it amounts to. You are not even going to be able to sand the streets or fix the streets and we are sitting back and putting up with this.

QUESTION: I'm part time city councillor with a full time job. I don't have the time to learn and study all the details you are talking about, especially about the school department.

DUEHAY: I say you have to know that stuff. You also have to know about every other department. You have to know your police department, your community development department, your fire department, everything else. If you are an elected official and you are responsible for voting on budgets and you don't know the details of those budgets, then eventually someone is going to come along that knows more than you and run against you. How you want to spend your time is up to you, of course. You have those responsibilities whether you choose to exercise them or not and I would suggest that you have to. You can't make an effective decision without knowledge.

K. HOLMES: (Medford) And one thing that we are doing, as a point of interest, is that the city manager has called an all-day work session of school department heads and city department heads and has invited the school committee and the city council to sit in on it and it's going to be held next Saturday, all day at Tufts University and I am hoping that we will all sit down together and be



able to work together on these mutual problems both school and the rest of the city and come to a much better understanding of the situation that is facing us so that we can save education, because I am extremely concerned about where education is going in the city of Medford.

DUEHAY: I think that is a very constructive thing to do. I think that you also need a meeting between the elected officials without the department heads probably, but that is a good way to prepare for it.



Edward J. King, Governor  
Byron J. Matthews, Secretary

Commonwealth of Massachusetts

## Executive Office of Communities and Development

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### MEMORANDUM

TO: City Councillors attending the workshop at Brandeis on April 17th.

FROM: Richard M. Kobayashi, Deputy Administrator, EOCD

DATE: May 21, 1982

SUBJECT: School Finance Matters

As you may recall, John Curley, City Solicitor of Leominster, made a presentation at the conference about The Role of City Councils and Mayors in the School Budget Process.

At the time of his presentation, "The Leominster Case", which sought to defend the right of mayors to cut the school budget, was pending before the Supreme Judicial Court.

On May 4, 1982, the SJC handed down a decision which upheld the mayor's powers to cut the school budget prior to submitting it to the City Council.

The final paragraph in the decision reads as follows:

"We affirm the judge's declaration that the mayor is not required to include in the annual city budget a recommendation for the support of the public schools in the amount requested by the school committee. The mayor has the authority to reduce the budget submitted to him by the school committee before submitting the annual total city budget (including the proposed appropriation for school purposes) to the city council."

I thought you would be interested in this development.

During the question and answer period, a number of questions were raised relating to the city council's obligation to vote an appropriation for the funding of collective bargaining contracts approved by the school committee.

In a recent decision the SJC held in a case involving Boston that "a clause that provides for salary increases in the second or third years of the agreement is valid and enforceable. It is the collective bargaining agreement that mandates the appropriations ... and the city council retains its power in the first year of the agreement to reject the collective bargaining agreement and refuse to make the appropriations."

The decision states that the Boston City Council appropriated funds to implement the first year of the contract, it presumably knew that there were incremental cost items in the second and third year of the agreement, and that when the city council approved the contract it agreed to fund those incremental cost items.

It seems that this case has relevance for all city councils and may have relevance for a broad range of multi-year contracts.

Your city solicitor should be prepared to offer advice on the impact of this case on any matters before your council.

For your information, a Summary of the Case from the Massachusetts Lawyer's Weekly is attached.

RMK/kaw

Attachment

CC: Mayors, City Council presiding officers



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## Schools and School Committees - Collective Bargaining - Job Security - Raises

Where a three year collective bargaining agreement provides for annual salary increases and job security for tenured teachers, we hold that the salary increase was impliedly authorized and is enforceable, but the job security clause is unenforceable because it improperly restricts the management prerogatives of the school committee.

### Salary Increase

"We conclude that a clause in a collective bargaining agreement that provides for salary increases in the second or third years of the agreement is valid and enforceable . . . In other areas the Legislature has authorized various municipal contracts for terms of between three and thirty years. G.L. c. 40, § 4. It would be absurd to say that those contracts are unenforceable unless an appropriation has been made for the entire obligation. (citations) Likewise, when the legislature has authorized collective bargaining contracts for terms not to exceed three years, it would be anomalous to say that clauses relating to wage levels and increases are enforceable for one year only.

"The city urges that if the salary increases are held enforceable, the school committee should be required to pay the increases out of the funds that it may appropriate pursuant to St. 1936, c. 224, and that the city should not be compelled to appropriate any funds in excess of that amount. It is argued that to require the city council to appropriate these funds would contradict the legislatively established balance between the responsibilities of the school committee and the city council for financing the Boston public schools. (citations) We disagree.

"The city council approved the entire collective bargaining agreement when it appropriated the necessary funds on October 1, 1980. Presumably the city council knew that there were incremental cost items that would require funding in the second and third years of the agreement. We think that when the city council approved the contract, it in essence agreed to fund those incremental cost items.

"It is the collective bargaining agreement that mandates the appropriation, not the school committee, and the city council re-

tains its power, in the first year of the agreement, to reject the collective bargaining agreement and refuse to make the appropriations."

### Job Security

We are of the opinion that a provision in a collective bargaining agreement that attempts to restrict the ability of a school committee to determine on an annual basis the size of its teaching staff intrudes into an area of exclusive managerial prerogative.

"General Laws c. 71, § 37, provides that the school committee shall have general charge of all the public schools . . . Essential to the management of the public schools is the ability to determine the appropriate size of the teaching staff in light of available funds. We do not believe that the Legislature, in G.L. c. 150E, meant to permit school committees to bargain away their managerial powers in this area.

[W]e must harmonize our interpretation of c. 150E with Boston's unique system of financing its public schools. . . . As noted earlier, St. 1936, c. 224, empowers the Boston school committee to maintain the same level of funding as in the preceding year. We think that this has the effect of placing the financial burden of maintaining job security in the Boston school system primarily on the school committee.

"Thus only the incremental costs of collective bargaining agreements, i.e., salary increases, which are not included in the formula in St. 1936, c. 224, should be appropriated by the city council. We conclude, therefore, that the Boston school committee may not compel an appropriation by the city council for the purpose of enforcing a job security clause in a collective bargaining agreement.

Judgments remanded for proceedings consistent with this opinion.

Boston Teachers Union, Local 66 v. School Committee of Boston (Lawyers Weekly No. C134-25 pages) Hennessey, C.J.)

(386 Mass. 197) James T. Grady for Boston Teachers Union, Local 66, Matthew E. Dwyer, for Boston Public School Building Custodians' Association, intervener; Richard W. Coleman & Paul F. Kelly, for Boston Association of School Administrators and Supervisors, Local 6, AFL-CIO, intervener. Harold J. Carroll, Corporation Counsel and Marcia Seeler, Special Assistant Corporation Counsel, for the city of Boston, intervener. Allan W. Drachman and Philip Collins for School Committee of Boston. James F. Kavanaugh, Jr. and Chester A. Janiak for the City Council of Boston. Margot Botsford & S. Stephen Rosenfeld, for Boston Teachers' Seniority Coalition, amicus curiae, submitted a brief.



